COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Environmental Affairs, to which was referred House Bill No. 1671, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

1	Page 1, delete lines 1 through 17, begin a new paragraph and insert:		
2	"SECTION 1. IC 4-21.5-7-3 IS AMENDED TO READ AS		
3	FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The office of		
4	environmental adjudication is established to review, under this article,		
5	decisions of the commissioner of the department of environmental		
6	management.		
7	(b) The office of environmental adjudication shall:		
8	(1) conduct adjudicatory hearings required to implement:		
9	(1) (A) air pollution control laws (as defined in IC 13-11-2-6),		
10	water pollution control laws (as defined in IC 13-11-2-261),		
11	environmental management laws (as defined in		
12	IC 13-11-2-71), and IC 13-19; and		
13	(2) (B) rules of:		
14	(A) (i) the air pollution control board;		
15	(B) (ii) the water pollution control board;		
16	(C) (iii) the solid waste management board; and		
17	(D) (iv) the financial assurance board; and		
18	shall be conducted by the office of environmental adjudication under		
19	IC 4-21.5.		
20	(2) notify a board referred to in subdivision (1)(B) of a final		
21	order of the office of environmental adjudication that		

interprets:

(A) a rule of the board; or

(B) a statute under which a rule of the board is authorized. SECTION 2. IC 4-22-2-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

- (b) The agency shall also submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars (\$500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. **Except as provided in subsection (c),** before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:
- (1) state; and
- (2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9:

- (1) the department of environmental management shall give written notice to the legislative services agency of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and
- (2) the legislative services agency shall prepare the fiscal analysis referred to in subsection (b) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

1	SECTION 3. IC 13-14-1-11.5, AS AMENDED BY P.L.261-1999,
2	SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3	JULY 1, 2003]: Sec. 11.5. (a) If the department utilizes proposes to
4	utilize a policy or statement that:
5	(1) interprets, supplements, or implements a statute or rule;
6	(2) has not been adopted in compliance with IC 4-22-2;
7	(3) is not intended by the department to have the effect of law;
8	and
9	(4) is not related solely to internal department organization;
10	the proposed policy or statement may not be put into effect until the
11	requirements of subsection (b) have been met.
12	(b) The department shall present the proposed policy or
13	statement under subsection (a) to the appropriate board. At least
14	forty-five (45) days before the presentation, the department shall
15	make available to the public, including posting on the department's
16	web site:
17	(1) the proposed policy or statement;
18	(2) information on the availability for public inspection of all
19	materials relied upon by the department in the development
20	of the proposed policy or statement, including, if applicable:
21	(A) health criteria;
22	(B) analytical methods;
23	(C) treatment technology;
24	(D) economic impact data;
25	(E) environmental assessment data; and
26	(F) other background data;
27	(3) the date, time, and location of the presentation under this
28	subsection to the appropriate board; and
29	(4) information regarding the opportunity for a person to
30	comment to the department and the appropriate board on the
31	proposed policy or statement before or at the time of the
32	presentation under this subsection.
33	The department shall provide to the appropriate board at the time
34	of the presentation under this subsection a copy of all comments
35	made by a person under subdivision (4). The proposed policy or
36	statement may not be put into effect until thirty (30) days after the
37	policy or statement is made available for public inspection and
38	comment and presented to the appropriate board.
39	(b) (c) If the department utilizes a policy or statement described in
40	subsection (a), the department shall distribute:
41	(1) two (2) copies of the policy or statement to the publisher of
42	the Indiana Register for publication in the Indiana Register; and

1	(2) the copies required under IC 4-23-7.1-26 to the Indiana library
2	and historical department.
3	(c) (d) The department shall:
4	(1) maintain a current list of all department policies and
5	statements described in subsection (a) that the department may
6	use in the department's external affairs; and
7	(2) update the list at least one (1) time each month.
8	(d) (e) The department shall include the following information on
9	the list described in subsection (e) (d) for each policy or statement:
10	(1) The title of the policy or statement.
11	(2) The identification number of the policy or statement.
12	(3) The date the policy or statement was originally adopted.
13	(4) The date the policy or statement was last revised.
14	(5) A reference to all other policies or statements described in
15	subsection (a) that are repealed or amended by the policy or
16	statement.
17	(6) A brief description of the subject matter of the policy or
18	statement.
19	(e) (f) At least one (1) time every three (3) months, the department
20	shall distribute two (2) copies of the list maintained and updated under
21	subsection (c) (d) to the following:
22	(1) The publisher of the Indiana Register.
23	(2) The Indiana library and historical department.
24	SECTION 4. IC 13-14-9-3 IS AMENDED TO READ AS
25	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The department shall
26	provide notice in the Indiana Register of the first public comment
27	period required by section 2 of this chapter. A notice provided under
28	this section must do the following:
29	(1) Identify the authority under which the proposed rule is to be
30	adopted.
31	(2) Describe the subject matter and the basic purpose of the
32	proposed rule. The description required by this subdivision must:
33	(A) include a listing of all alternatives being considered by the
34	department at the time of the notice; and must
35	(B) include:
36	(i) a statement indicating whether each alternative listed
37	under clause (A) is imposed under federal law;
38	(ii) a statement explaining how each alternative listed
39	under clause (A) that is not imposed under federal law
40	differs from federal law; and
41	(iii) any information known to the department about the
42	notential fiscal impact of each alternative under clause

1	(A) that is not imposed under federal law; and
2	(C) set forth the basis for each alternative listed under clause
3	(A).
4	(3) Describe the relevant statutory or regulatory requirements or
5	restrictions relating to the subject matter of the proposed rule that
6	exist before the adoption of the proposed rule.
7	(4) Request the submission of alternative ways to achieve the
8	purpose of the proposed rule.
9	(5) Request the submission of comments, including suggestions
10	of specific language for the proposed rule.
11	(6) Include a detailed statement of the issue to be addressed by
12	adoption of the proposed rule.
13	SECTION 5. IC 13-14-9-4 IS AMENDED TO READ AS
14	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The department shall
15	provide notice in the Indiana Register of the second public comment
16	period required by section 2 of this chapter. A notice provided under
17	this section must do the following:
18	(1) Contain the full text of the proposed rule, as provided under
19	IC 4-22-2-24(c).
20	(2) Contain a summary of the response of the department to
21	written comments submitted under section 3 of this chapter
22	during the first public comment period.
23	(3) Request the submission of comments, including suggestions
24	of specific amendments to the language contained in the proposed
25	rule.
26	(4) Contain the full text of the commissioner's written findings
27	under section 7 of this chapter, if applicable.
28	(5) Identify each element of the proposed rule that imposes a
29	restriction or requirement on persons to whom the proposed
30	rule applies that is not imposed under federal law.
31	(6) With respect to each element identified under subdivision
32	(5), identify:
33	(A) the environmental circumstance or hazard that
34	dictates the imposition of the proposed restriction or
35	requirement to protect human health and the
36	environment;
37	(B) examples in which federal law is inadequate to provide
38	the protection referred to in clause (A); and
39	(C) the:
40	(i) estimated fiscal impact; and
41	(ii) expected benefits;
12	hased on the extent to which the proposed rule exceeds the

1	requirements of federal law.
2	(7) For any element of the proposed rule that imposes a
3	restriction or requirement that is not imposed under federal
4	law, describe the availability for public inspection of all
5	materials relied upon by the department in the development
6	of the proposed rule, including, if applicable:
7	(A) health criteria;
8	(B) analytical methods;
9	(C) treatment technology;
10	(D) economic impact data;
11	(E) environmental assessment data;
12	(F) analyses of methods to effectively implement the
13	proposed rule; and
14	(G) other background data.
15	SECTION 6. IC 13-14-9-4.2 IS ADDED TO THE INDIANA CODE
16	AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17	1, 2003]: Sec. 4.2. Not less than fourteen (14) days before the date
18	of preliminary adoption of a proposed rule by a board, the
19	department shall make available to the board the fiscal analysis
20	prepared by the legislative services agency with respect to the
21	proposed rule under IC 4-22-2-28(c).
22	SECTION 7. IC 13-14-9-4.5 IS AMENDED TO READ AS
23	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.5. (a) Except for a
24	rule:
25	(1) that has been preliminarily adopted by a board in a form that
26	is:
27	(A) identical to; or
28	(B) not substantively different from;
29	the proposed rule published in a second notice under section 4 of
30	this chapter; or
31	(2) for which the commissioner has made a determination and
32	prepared written findings under section 7 or 8 of this chapter;
33	a board may not adopt a rule under this chapter until the board has
34	conducted a third public comment period that is at least twenty-one
35	(21) days in length.
36	(b) The department shall publish notice of a third public comment
37	period with the:
38	(1) text; and
39	(2) summary; and
40	(3) fiscal analysis;
41	that are required to be published in the Indiana Register under section
42	5(a)(2) of this chapter.

1 (c) The notice of a third public comment period that must be 2 published in the Indiana Register under subsection (b) must request the 3 submission of comments, including suggestions of specific 4 amendments, that concern only the portion of the preliminarily adopted 5 rule that is substantively different from the language contained in the 6 proposed rule published in a second notice under section 4 of this 7 chapter. 8 SECTION 8. IC 13-14-9.5-1.1, AS ADDED BY P.L.146-2001, 9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE 10 JULY 1, 2003]: Sec. 1.1. (a) This section applies to the following: 11 (1) A rule that is required to receive or maintain: 12 (A) delegation; 13 (B) primacy; or 14 (C) approval; 15 for state implementation or operation of a program established under federal law. 16 17 (2) A rule that is required to begin or continue receiving federal 18 funding for the implementation or operation of a program. 19 (b) A rule described in subsection (a) does not expire under this 20 chapter. 21 (c) In the seventh year after the effective date of a rule or an amendment to a rule described in subsection (a), the department shall 22 23 publish a notice in the Indiana Register. The notice may contain a list 24 of several rules that have been effective for seven (7) years. A separate 25 notice must be published for each board with rulemaking authority. A 26 notice under this subsection must provide for the following: 27 (1) A written comment period of at least thirty (30) days. 28 (2) A request for comments on specific rules that should be 29 reviewed through the regular rulemaking process under IC 13-14-9. 30 31 (3) A notice of public hearing before the appropriate board. 32 (4) The information required to be identified or described under IC 13-14-9-4(5) through IC 13-14-9-4(7) in the same 33 manner that would apply if the proposed renewal of the 34 35 expired rule were a proposal to adopt a new rule. 36 (d) The department shall: 37 (1) prepare responses to all comments received during the 38 comment period; and 39 (2) provide all comments and responses to the board during the 40 public board hearing; 41 described in subsection (c). 42 (e) The board, after considering the written comments and

1 responses, as well as testimony at the public hearing described in 2 subsection (c), shall direct the department on whether additional 3 rulemaking actions must be initiated to address concerns raised to the 4 board. 5 (f) For the rules described in subsection (a) that are effective on or 6 before July 1, 2001, the notice described in subsection (c) shall be 7 published in the Indiana Register before December 31, 2008. 8 SECTION 9. IC 13-15-4-1, AS AMENDED BY P.L.138-2000, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE 9 10 JULY 1, 2003]: Sec. 1. Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application 11 12 filed with the department after July 1, 1995, within the following 13 number of days: 14 (1) Three hundred sixty-five (365) days for an application 15 concerning the following: (A) A new hazardous waste or solid waste landfill. 16 17 (B) A new hazardous waste or solid waste incinerator. 18 (C) A major modification of a solid waste landfill. 19 (D) A major modification of a solid waste incinerator. 20 (E) A new hazardous waste treatment or storage facility. 21 (F) A new Part B permit issued under 40 CFR 270 et seg. for 22 an existing hazardous waste treatment or storage facility. 23 (G) A Class 3 modification under 40 CFR 270.42 to a 24 hazardous waste landfill. 25 (2) Two hundred seventy (270) days for an application concerning 26 the following: (A) A Class 3 modification under 40 CFR 270.42 of a 27 28 hazardous waste treatment or storage facility. 29 (B) A major new National Pollutant Discharge Elimination 30 System permit. 31 (3) One hundred eighty (180) days for an application concerning 32 the following: (A) A new solid waste processing or recycling facility. 33 34 (B) A minor new National Pollutant Discharge Elimination 35 System individual permit. 36 (C) A permit concerning the land application of wastewater. 37 (4) One hundred fifty (150) days for an application concerning a 38 minor new National Pollutant Discharge Elimination System 39 general permit. 40 (5) One hundred twenty (120) days for an application concerning 41 a Class 2 modification under 40 CFR 270.42 to a hazardous waste 42 facility.

1	(6) Ninety (90) days for an application concerning the following:			
2	(A) A minor modification to a solid waste landfill or			
3	incinerator permit.			
4	(B) A wastewater facility or water facility construction permit.			
5	(7) The amount of time provided for in rules adopted by the air			
6	pollution control board for an application concerning the			
7	following:			
8	(A) An air pollution construction permit that is subject to 326			
9	IAC 2-2 and 326 IAC 2-3.			
10	(B) An air pollution facility construction permit (other than as			
11	defined in 326 IAC 2-2).			
12	(C) Registration of an air pollution facility.			
13	(8) Sixty (60) days for an application concerning the following:			
14	(A) A Class 1 modification under 40 CFR 270.42 requiring			
15	prior written approval, to a hazardous waste:			
16	(i) landfill;			
17	(ii) incinerator;			
18	(iii) treatment facility; or			
19	(iv) storage facility.			
20	(B) Any other permit not specifically described in this section			
21	for which the application fee exceeds one hundred forty-nine			
22	dollars (\$100) (\$49) and for which a time frame has not been			
23	established under section 3 of this chapter.".			
24	Delete page 2.			
25	Page 3, delete lines 1 through 36.			
26	Page 4, line 4, delete "Except as provided in section 12.1 of".			
27	Page 4, line 5, delete "this chapter, after" and insert "After".			
28	Page 4, line 10, after "may" insert ", except as provided in section			
29	12.1 of this chapter,".			
30	Page 4, line 15, delete "Refund" and insert "Except as provided in			
31	section 12.1 of this chapter, refund".			
32	Page 4, line 20, after "(i)" insert "except as provided in section			
33	12.1 of this chapter,".			
34	Page 4, line 28, delete "Refund" and insert "Except as provided in			
35	section 12.1 of this chapter, refund".			
36	Page 5, delete lines 2 through 42, begin a new paragraph and insert:			
37	"SECTION 12. [EFFECTIVE UPON PASSAGE] (a) As used in			
38	this SECTION, "boards" refers to:			
39	(1) the air pollution control board;			
40	(2) the water pollution control board; and			
41	(3) the solid waste management board.			
42	(b) Before November 1, 2003, the environmental quality service			

1	council shall:
2	(1) consider whether the rulemaking operations of the boards
3	are sufficiently independent of the influence of:
4	(A) the department of environmental management; and
5	(B) other state agencies or entities;
6	(2) consider the overall efficiency of rulemaking operations of
7	the boards; and
8	(3) submit its final report on the matters described in
9	subdivisions (1) and (2) to:
10	(A) the governor; and
11	(B) the executive director of the legislative services agency.
12	(c) As part of its consideration under subsections (b)(1) and
13	(b)(2), the environmental quality service council shall examine the
14	following:
15	(1) The composition of the boards.
16	(2) The appointing authorities for members of the boards.
17	(3) The extent to which the boards control staff who serve the
18	boards.
19	(4) The sources and availability of data concerning:
20	(A) the fiscal impact; and
21	(B) other aspects;
22	of proposed rules.
23	(5) The involvement of employees of:
24	(A) the department of environmental management; and
25	(B) other state agencies or entities;
26	in the rulemaking process.
27	(6) The procedures to initiate and adopt proposed rules.
28	(7) The procedures to determine which issues are addressed
29	in proposed rules and which issues are addressed in nonrule
30	policy documents.
31	(8) The requirements for public notice and public
32	participation in the rulemaking process.
33	(9) The means by which other states maintain independent
34	and efficient operations of environmental rulemaking entities.
35	(10) Any other matter the environmental quality service
36	council considers appropriate.
37	(d) This SECTION expires January 1, 2004.
38	SECTION 13. [EFFECTIVE JULY 1, 2003] (a) IC 13-14-1-11.5(b),
39	as amended by this act, applies to proposed policies or statements
40	presented by the department of environmental management to the
41	appropriate board after June 30, 2003.
42	(b) The following, all as amended by this act, apply to proposed

1 rules for which the department of environmental management 2 provides notice in the Indiana Register of the first public comment 3 period required by IC 13-14-9-3, as amended by this act, after June 4 30, 2003: 5 (1) IC 4-22-2-28. 6 (2) IC 13-14-9-3. 7 (3) IC 13-14-9-4. 8 (4) IC 13-14-9-4.5. 9 (5) IC 13-14-9.5-1.1. 10 (c) This SECTION expires January 1, 2004.

SECTION 14. An emergency is declared for this act.".

1

3	Renumber all SECTIONS consecutive		
	(Reference is to HB 1671 as printed I	February 28, 2003.)	
and when so ame	ended that said bill do pass.		
Committee Vote:	Yeas 10. Navs 0.		
23	2000 10,110,000		
		Senator Gard, Chairp	erson